SIM MAI TIK

v.

PUBLIC PROSECUTOR

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
LP THEAN J
AP RAJAH J
[CRIMINAL APPEAL NO. 6 OF 1987]
4 OCTOBER 1988

CRIMINAL PROCEDURE: *Trafficking - Defence of own consumption - Whether Trial Judges correct in refusing retraction of caution statement - Whether accused should be charged for one offence or 70 offences due to possession of 70 sachets of drugs - Misuse of Drugs Act, ss. 2, 5 (a), 17(c) explained.*

The appellant was convicted of trafficking in 67.49 grams of diamorphine and appealed against his conviction.

Evidence showed that acting on information received narcotics officers made a search on a car being driven by the appellant when the car was at the Customs checkpoint entering Singapore. The appellant was with a woman. 2 sachets of brownish substance was found in the handbag of the woman and when the appellant was informed of this he led the officers to the cassette box in the car in which the officers found the drugs.

The appellant was also found with 2 keys one of which was his room key in Johor Bharu where Malaysian narcotics officers discovered certain items including 2 sachets of heroin, plastic sealing machine, straws and polythene bags.

The evidence showed that the appellant had entered Singapore from Johor Bharu 103 times from 29 January 1984 to 5 August 1984 and that he never stayed in Singapore for one night continuously.

The appellant on the day of his arrest was examined by a medical officer who found him generally well. On 6 August 1984 the appellant was again examined by a medical officer who found him satisfactory with no signs of any drug withdrawal although the appellant complained of 'craving' for drugs. On 8 August 1984 the appellant was again examined by a doctor who found him to have moderate drug withdrawal systems.

The appellant also made a caution statement that he is a drug addict. In his testimony he said that his consumption is about 2 or 3 sachets a day and that he brought such a large amount of drugs into Singapore because it meant he need not bring the drugs in each time he came into Singapore. He said he will hide the drugs in paper drink boxes which were then strewn in a compound of an unoccupied house.

The appellant contended that:

i) the trial Judges erred in rejecting his evidence that the drugs were for his own consumption and that the Judges were misdirected in failing to consider the appellant's evidence;

ii) the trial Judges were wrong in rejecting the appellant's explanations of the items found in his room;

iii) the trial Judges misdirected themselves to the effect of the caution statement of part of which the appellant contended had been 'retracted' at the trial as being made when he was feeling 'very confused' and 'frightened' and caused by his 'craving' for the 'drugs'.

iv) the trial Judges were wrong in holding that the appellant could lawfully be charged for one offence when he should have been charged with 70 offences because the drugs were found in 70 sachets and that as the quantity of drugs in each sachet is less then 2 grams each, the presumption of trafficking and/or the charge was not established.

Held:

[1] there was an abundance of evidence to justify the Judges' finding that the appellant was not a heavy addict.

[2] the trial Judges are entitled to draw their inference from the totality of evidence.

[3] from the evidence the Judges were correct in rejecting the appellant's explanation for retracting any part of the voluntary statement;

[4] On reading s. 17(c) together with s. 2 of the Misuse of Drugs Act it is clear that there is no requirement or restriction that the compound mixture or receptable (of which the substances or product listed in the First Schedule is one of the contents) be found packed or mixed in any particular manner, in the possession of an accused person let alone in a single container, parcel, package, receptacle, compound or mixture.

[5] the words "anything that contains" and "contained" appearing in s. 2 and s. 17(c) refer to the content of the compound, mixture or receptacle in the possession of the accused and has nothing to do with how the compound is packed or mixed.

[6] It is the weight of the drugs in any compound however packed or mixed in the possession of the accused that is relevant.

[7] The accused's appeal is dismissed.

[Appeal dismissed.]

Legislation referred to:
Criminal Procedure Code (Cap 113) [Sing], s. 121(6)
Misuse of Drugs Act (Cap 185) [Sing], ss. 2, 5(A), 17, 33

For the public prosecutor - Swaran Singh (Jennifer Marie with him)
For the appellant - Dennis Tan

JUDGMENT

Wee Chong Jin CJ:

The appellant, Sim Mai Tik, was tried convicted and sentenced to death by the High Court on the following charge:

> You, Sim Mai Tik, are charged that you, on or about 5 August 1984 at about 3.25 pm, at the Woodlands Customs Checkpoint, Singapore did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185), Revised Edn., 1985, to wit, 70 plastic bags of diamorphine weighing no less than 67.49 grams, without any authorisation under the said Act or the regulations made thereunder and you have thereby committed an offence under s. 5A and punishable under s. 33 of the Misuse of Drugs Act.

He appealed against the conviction. At the conclusion of the hearing of the appeal, we dismissed the appeal. We now give our reasons.

The facts are these. On 5 August 1984, at about 7.45 am, acting on information received, a party of narcotics officers from the Central Narcotics Bureau, assembled at Woodlands Customs Checkpoint to await a Malaysian-registered white saloon car bearing Registration No. JBB 9373. At 3.05 pm, the car driven by the appellant, who was accompanied by a female Chinese later ascertained to be Ong Hong Yiat ("Ong"), was spotted queueing at one of the car bays at the Checkpoint. At about 3.10 pm, it reached Counter 20 for immigration clearance. The Customs Officer directed the car to the Customs Inspector Pit for a "100% check" for drugs.

The car was searched in the presence of the appellant and Ong. A narcotics detector dog, named Clyde, was led into the car. Clyde went to the back of the front passenger seat, wagged its tail and refused to leave the area. According to its handler, Clyde gave an abnormal response indicating the presence of "some smell pertaining to drugs."

The appellant and Ong were then searched in separate rooms. In the handbag of Ong, two sachets of brownish substance (wrapped in tissue paper), later ascertained to contain diamorphine, were found. When told of the discovery of the two sachets on Ong, the appellant said in Hokkien: "Help me, I was given a bundle and I kept it in the cassette box". He led a senior narcotics officer to the car and pointed out that the cassette box was under the front passenger seat. The appellant was escorted back to the Search Room, where he was asked as to the number of sachets in the cassette box. He replied that there were six plastic bags with ten sachets in each, containing "peh-hoon".

When the cassette box was opened in the presence of the appellant and Ong, there was found, amongst some cassette tapes, a bundle wrapped in newspaper and tied with a rubber band. When the bundle was unwrapped, there was found - contained in four plastic bags wrapped in each other (the last bag coated in grease and fastened by two rubber bands) - seven sealed plastic packets. When these sealed packets were opened, each was found to contain ten sachets of brownish substances, thereby making 70 sachets in all. These substances, on analysis, were proved to contain a total of 276.6 grammes (nett) of a granular substance with a diamorphine content of 67.49 grammes (nett). Urine sample taken from the appellant and Ong, at the time of arrest, were found, on analysis, to contain morphine.

At the time of his arrest, two bunches of keys were found on the appellant, who told the customs officers that one of the keys in the bunches was his room key for No. 31, Jalan Wong Ah Fook, Johor Bharu. A party of Malaysian narcotics officers raided the room and found, amongst other things, the following:

(a) two sachets of a granular substance, later analysed and found to contain 0.80 gramme and 1.17 grammes of heroin;

(b) one expired restricted passport of the appellant;

(c) one "Rotel" plastic-sealing machine (which was examined and found to have no trace of heroin or morphine);

(d) two bundles of plastic straws;

(e) a photograph of Ong;

(f) half packet of plastic bags;

(g) 21 pieces of polythene bags;

(h) a straw of a granular substance, later analysed and found to contain 0.124 gramme of heroin;

(i) a diary of the appellant.

On 5 August 1984, at 8.25 pm, the appellant was examined by a medical officer at the Singapore General Hospital and found to be "generally well". No bodily injury was noted on him. He was discharged.

On the same day, at 9.25 pm, in a statement made under s. 121(6) Criminal Procedure Code (Chapter 113) to a senior narcotics officer, and recorded through a certified interpreter, the appellant said in Hokkien:

> I brought the peh hoon into Singapore. My girlfriend who was arrested with me did not know anything. For each trip, I was paid $1,000. I am a peh hoon addict and was forced to do it because of financial difficulties. I have to support my mother and three younger sisters.

At the trial, the appellant did not dispute the admissibility of the confession.

On 6 August 1984, at 12.30 pm, the appellant was again examined by another medical officer in the Singapore General Hospital, who found his general condition to be "satisfactory", with "no signs of any drug withdrawal". The appellant however complained to the doctor that he was "craving" for drug. On 8 August 1984, at 12.15 am, the appellant was examined by a doctor, Dr Walter Williams at Changi Prison Hospital, and was found to have drug withdrawal syndrome and admitted to hospital. His condition was otherwise fair. Dr William testified that according to the classification of "mild", "moderate" or "severe" symptoms, the appellant was found to have "moderate" drug withdrawal symptoms.

The prosecution led evidence to establish that during the period from 29 May 1984 to 1 August 1984, the motor vehicle JBB 9373 entered Singapore on 36 occasions. The appellant's passport also showed that during the period from 28 January 1984 to 5 August 1984, he entered Singapore from Johor Bahru 103 times and that during the period 29 January 1984 to 4 August 1984, he entered Johor Bahru 102 times. The trial Judges examined the entry and departure dates stamped on his passport and noted that the appellant "when he stayed overnight in Singapore, never stayed for more than one night continuously." They described him as "indeed a frequent visitor to Singapore".

At the close of the prosecution case, no submission was made by Counsel on behalf of the appellant. The trial Judges found that there was sufficient evidence which, if unrebutted, would warrant his conviction. He elected to give evidence and was the sole witness to give evidence in his defence.

His defence was that he was a heroin addict and that he had brought the drugs into Singapore for his own consumption. He gave evidence that prior to his arrest, his rate of consumption was about two to three times a day, though, on occasions, it was five to six times a day, which would amount to about two to three sachets a day. He testified that on the day of his arrest, he had bought from a dealer in Johor Bahru 60 sachets wrapped in a bundle, without realising that it contained 70 sachets. His explanation for the large quantity of heroin he brought into Singapore was that it was convenient to do as this meant that he did not have to bring in heroin each time he came to Singapore. He stated that the heroin was hidden in paper drink boxes which were then strewn in the compound of some unoccupied houses in Yio Chu Kang area, near where he was operating a gambling den in partnership with two others.

The trial Judges who heard and saw him give evidence, disbelieved his defence. They stated their findings in these terms:

> After careful consideration of the evidence and the submissions of Counsel for the accused and the DPP, we were entirely satisfied that the accused had not on the balance of probabilities rebutted the presumption that he was trafficking in heroin as charged. We did not believe the explanations of the accused as set out above. The objective facts belied the accused's story. The things found in the accused's room in Johore Bahru were things which a trafficker of drugs would be expected to have. The accused was not a mere consumer of heroin. Even in the absence of the statutory presumption of trafficking, the irresistable inference from the facts was that the accused intended to and did traffic in heroin at the time of his arrest. In our view, the prosecution had also proved beyond reasonable doubt that the accused had in his possession on 5 August 1984 at about 3.25 pm at the Woodlands Customs Checkpoint not less than 67.49 grams of heroin for the purpose of trafficking.

In this appeal, Counsel for the appellant advanced a number of grounds of appeal, most of which related to those findings of fact by the trial Judges.

The main ground of appeal was that the trial Judges erred in rejecting the appellant's evidence that the heroin found in his possession was for his own consumption. Counsel for the appellant argued that the trial Judges misdirected themselves by failing to consider the evidence of the appellant that he and Ong were "heavy abusers" consuming at an average of one to two sachets a day and because of that, he had to keep a substantial supply in Singapore. It was contended that the trial Judges gave no specific reason for rejecting his evidence in its entirety. But the issue was a straight question of fact and credibility and the trial Judges clearly did not attach any credence to his evidence. They found that the appellant "was not a mere heroin addict". In our judgment, there was abundant evidence to justify the finding. Firstly, the evidence of Dr Walter Williams, who examined the appellant on 8 August 1984, was that the appellant was only a moderate consumer of heroin; the appellant in response to a direct question put in cross-examination, accepted that in his mind, he was not a heavy addict. Secondly, neither in his statement given under s. 121(6) nor in the voluntary statements made by him on subsequent dates (from 7 August to 17 August 1984), did the appellant mention that the drugs were intended for his own consumption. Thirdly, the appellant's evidence that he would hide the drugs in paper drink boxes in the compound of some unoccupied and unguarded houses was simply too far-fetched; he could not even give the names of the roads of those unoccupied houses. Fourthly, the appellant himself accepted, under cross-examination, that it was easier for him to have consumed the heroin in Johor Bahru than to have it brought into Singapore for consumption, particularly since he would come to Singapore sometime in the afternoon and return to Johor Bahru before midnight. In these circumstances, the appellant's defence that he had brought the 67.49 grammes of diamorphine - which was more than four times the minimum weight which attracts the death penalty - into Singapore for his consumption clearly defied credulity.

Another ground of appeal was that the trial Judges were wrong in rejecting the appellant's explanation for the things found in his room in Johor Bahru, namely, the two sachets of heroin, plastic sealing machine, straws, polethene bags and the straw containing deposit of consumed heroin. The trial Judges found that "the things found in the accused's room in Johor Bahru were things which a trafficker of drugs could be expected to have." Counsel for the appellant contended that there was no basis for that finding. But, in our view, that was an inference which the trial Judges were entitled to draw from the totality of the evidence. In cross-examination, the appellant, contrary to his earlier assertion that he bought the drugs

and brought them into Singapore in the original package, was driven to accept that the 21 polythene bags seized from his room matched, and indeed were identical to the type used to wrap the bundle of drugs he was caught trafficking in. The inescapable inference was that the plastic bags used to wrap the bundle of drugs came from the same stock of 21 bags seized from the appellant's room. It pointed irrefutably to the conclusion they were used for drug trafficking purposes.

Yet another ground of appeal was that the trial Judges misdirected themselves on the effect of the statement made under s. 121(6) Criminal Procedure Code, part of which statement, it was contended, having been "retracted" by the appellant at the trial, as having been made when he was feeling "very confused" and "frightened" caused, it was said, by his "craving" for drugs. But the appellant neither disputed the voluntariness of the statement nor challenged its admissibility. It was in evidence that before the statement was given at 9.25 pm on 5 August 1984, he was examined about an hour earlier (at 8.25 pm) by a doctor, who found him "conscious", "alert" and "well-orientated". The doctor, who was particularly looking for any symptom of drug withdrawal could not find any. After he had given the statement, he was examined the following day (6 August 1984) by yet another doctor, who also could not find any symptom of drug withdrawal, despite the appellant's complaint that he was "craving for drugs". It was clearly not a statement made by a person who was confused. The appellant himself admitted that it contained statements, for example, that he had to support his mother and three younger sisters, which were true. At one point in cross-examination, he admitted that although he was in a confused state of mind, he knew and understood what he was saying. In these circumstances, the trial Judges were entirely correct in rejecting the appellant's explanation for retracting any part of the statement voluntarily given under s. 121(6).

The final ground of appeal advanced on behalf of the appellant was that the trial Judges were wrong in holding that the appellant could lawfully be charged for one offence of trafficking when he should have been charged with 70 offences of trafficking in such quantity of drugs as were found contained in each of the 70 sachets. The argument, as we understood it, was that the definition of "controlled drug" in s. 2 and the words "contained in any controlled drug" in s. 17(c) of the Misuse of Drugs Act must be read, strictly, to apply to such quantity of diamorphine contained in any controlled drug that was packed in each of the 70 individual sachets, and **not** to the **combined** quantity of diamorphine found in all 70 sachets. It was contended that as each of the 70 sachets could well contain less than 2 grammes of diamorphine, the prosecution could not rely on the statutory presumption and/or the charge against the appellant for trafficking in 67.49 grammes of diamorphine was not established beyond all reasonable doubt.

"Controlled drug" is defined in s. 2 to mean:

> any substance or product which is for the time being specified in Part I, II or III of the First Schedule or anything that contains any such substance or product.

Diamorphine is shown in Part I of the First Schedule as a controlled drug.

Section 5(a), in so far as material, provides:

> 5. Except as authorised by this Act or the regulations made thereunder, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore to:
>
> (a) traffic in a controlled drug;
>
> ...

Section 17(c), in so far as is material, provides as follows:

> 17. Any person who is proved or presumed to have had in his possession more than:
>
> ...
>
> (c) 2 grammes of diamorphine (heroin) contained in any controlled drug; or
>
> ...
>
> shall, until the contrary is proved, be presumed to have had that controlled drug in his possession for the purpose of trafficking therein.

In rejecting the submission advanced by Counsel, the trial Judges held as follows:

> Neither s. 17 nor the definition of controlled drug is qualified in any way as to the manner in which the diamorphine is possessed by or found in the possession of an accused person. The said section applied where a person is proved or presumed to have had in his possession a prescribed amount of diamorphine. It does not matter that the said amount of diamorphine is compounded or mixed with or in any other substance so that it is not of 100% purity nor does it matter that the diamorphine or mixture or compound of which it is part is found packed in one container or package or in several containers or packages. What matters is the amount of diamorphine, however mixed in any substance or packed that is found in the possession of the accused at any one time.

In our judgment, the trial Judges' analysis of the statutory provisions was entirely correct. Counsel for the appellant relied on the words "contained in any controlled drug" in s. 17(c) which, when read with the words in s. 2 - "anything which contains any such substance or product" - must, so it was contended, refer to such controlled drug as was found contained in any single compound, mixture or receptacle, but not a combination of any of these. But on a plain reading of the provisions referred to above, it is clear that they are not restricted or qualified in any way by the requirement, that the compound, mixture, or receptacle - of which the substance or product listed in the First Schedule is one of its contents - be found packed or mixed in any particular manner, in the possession of an accused person let alone in a single container, parcel, package, receptacle, compound or mixture. In the context of those provisions, the words "anything that contains" and "contained' appearing in s. 2 and s. 17(c) refer to the content of the compound, mixture or receptacle in the possession of the accused person, and has nothing whatever to do with how the compound, mixture or receptacle is packed or mixed by the accused person. Regarded, therefore, simply from the point of view of language, it is plain beyond all doubt that what matters, for the purposes of those statutory provisions, is the prescribed minimum weight of the substance or product listed in the First Schedule found contained in any compound, mixture of receptacle, **however packed or mixed,** in the possession of the accused person at any given time.

In any event, the facts clearly showed that the appellant had, at all material times, been in possession of a single parcel hidden in a cassette box. At no time were the 70 sachets of drugs, carefully wrapped in several plastic bags as one bundle, been separated from each other or stored in different places. In our judgment, therefore, the argument advanced by the Counsel for the appellant was clearly without substance and the charge which the appellant faced was a correct one.

It was for these reasons that we dismissed the appeal.

Also found at [1989] 1 CLJ 101